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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/349,380	07/09/1999	JOHN P. JASPER		6566

7590 05/04/2005

LUNDY AND ASSOCIATES  
825 ANTHONY WAYNE BUILDING  
203 E BERRY STREET  
FORT WAYNE, IN 46802

EXAMINER
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SIEFKE, SAMUEL P

ART UNIT	PAPER NUMBER
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1743

DATE MAILED: 05/04/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 09/349,380	<b>Applicant(s)</b> JASPER, JOHN P.	
	<b>Examiner</b> Samuel P. Siefke	<b>Art Unit</b> 1743	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 07 February 2005.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 17,18,20-41,45-50,53,54,70,84,85 and 90 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 17,18,20-41,45-50,53,54,70,84,85 and 90 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 112*

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims **17-18, 20-41, 45-50, 53, 54, 70, 84-85, 90** are rejected under 35

U.S.C. 112, first paragraph, as failing to comply with the written description requirement.

The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Anthropogenically is defined by Webster's Ninth New Collegiate Dictionary "of, relating to, or resulting from the influence of human beings on nature." As used in claim 17, 45, 50 and 70 are "anthropogenically unaltered" is anything that is not influenced by human beings. In the Applicant's specification on page 8, the Applicant discloses the meaning of a batched product. The Examiner would like to point out that an isotope concentration that is anthropogenically **unaltered** means that the isotope is in a naturally occurring concentration that is **not** altered by a human being. Any man controlled process in which a kinetic isotope effect occurs fits within the definition of anthropogenically **altered**. Examples of an anthropogenically altered concentrations include any product that has been processed, i.e. distilling, reaction, batched or any process that would enrich or change the isotopic ratio of the isotope or concentration of

the isotope. The Examiner has read through the specification and was unable to find an anthropogenically unaltered isotope concentration method.

### ***Response to Arguments***

Applicant's arguments filed 2/18/05 have been fully considered but they are not persuasive. Applicant brings up Welle patent numerous times in arguments but Welle patent is not cited in a current rejection. Therefore, arguments directed to Welle patent will not be addressed. Applicant brings up new definitions of words in an attempt to bring new life to a claim. Specifically, "The word "naturally" as used here does not refer to "as in Nature"; instead, it refers to "as observed." This commonly-used shorthand terminology of isotope geochemists refers to material which are not exogenous or added, but are simply part of the observed or ambient composition of material." Applicant cannot define a term such as naturally as being something different that what is defined in a dictionary and most commonly known as being defined "as in Nature". Nowhere in the specification is naturally defined differently as this new meaning "as observed."

The Examiner would like to point out that there are many times throughout a production of a product that the product can be a "batched product". "The Examiner states, with reference to Applicant's specification on page 8, without reference to any time frame that Applicant's batched products are anthropogenically altered in view of the fact that Applicant's claims would allow alteration of the product prior to batching." There are many stages throughout the production of a product that can be a "batched

product”, for example. A “batched product 1a” can be spiked with a taggant to produce a “batched product 1b”, which would then become a “product after batching”.

Applicant states, “Applicant’s method begins with a batched product and proceeds with the step of analyzing for the concentration of a plurality of the “naturally occurring” observed stable isotopes of that product in their anthropogenically unaltered isotopic concentrations. The Examiner would like to point out that nowhere in the claims recites the word “observed.” It is noted again that the specification does not define “natural” in this new meaning given out in the applicant’s arguments.

In an interview with the Applicant, a proposed suggestions was given out to put the claims in a closed ended form, in order to exclude anything that is added to a product, isotopic tagging, etc.

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Samuel P. Siefke whose telephone number is 571-272-1262. The examiner can normally be reached on M-F 7:00am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jill A. Warden can be reached on 571-272-1700. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Sam P. Siefke

May 2, 2005

  
Jill Warden  
Supervisory Patent Examiner  
Technology Center 1700